IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.798 OF 1996
IN
CHAMBER SUMMONS NO.825 OF 1995
IN
SUIT NO.2301 OF 1995

1. Smt.Smita Rajiv Sah
of Bombay, Indian Inhabitant,
residnig at 51-A, Mehrina,
Plot No.C, 51, Nepeansea Road,
Bombay-400 026.

2. Anushree Rajeev Sah,
a minor, through St.Smita Rajeev
Sah, residing at 51-A, Meherina,
Plot No.C-51, Napeansea Road,
Bombay-400 026. .. Appellants
(Orig.Defts.)

v/s.

1. Smt.Ayodhya Kumari Sah
of Bombay Indian Inhabitant,
residing at 51-A, Mehrina,
Plot No.C, 51, Napeansea Road,
Bombay-400 026.

2. Mr.Sah Roop Narain

3. Mr.Anil Kumar Sah

4. Smt.Sunita Anil Sah

5. Shri Sunil KUmar Sah

6. Smt.Kum Kum Sunil Sah

7. Shri Sanjeev Kumar Sah

8. Smt.Meenakshi Sanjeev Sah

9. Shri Mohit Sah

10.Shrija Sah, a minor through
her father Mr.Sunil Kumar Sah

11.Meghana Sah, a minor through
her father Mr.Anil Kumar Sah

12.Sakshi Sah, a minor through
her father Mr.Sanjeev Kumar Sah

13.Sameer Sah, a minor through
his father Mr.Sunil Kumar Sah,
all residing at H-1-A

Chittaranjan Marg, C-Scheme,
Jaipur-1. .. Respondents
(Nos.1 to 13 orig.
Respdts. to the
chamber summons)

Mr.Phiroz Palkhiwala i/by M/s.Udwadia Udeshi abd Verhus for the appellants.

Mr.A.A.Joshi with Mr.Lalit Jain for the respondent No.1.

Mr.P.K.Samdani with Mr.Nirmal Devnani i/by M/s.Meghraj & Associates for the respondent No.2.

**CORAM : R.M. LODHA AND**
**J.P. DEVADHAR, JJ.**

**DATED : 29th July, 2005**

**ORAL JUDGMENT (Per R.M.Lodha, J.)**

Heard.

2. At the outset, we were informed that the respondent Nos.5 and 6 viz. Shri Sunil Kumar Sah and Smt.Kum Kum Sunil Sah are dead. Their legal representatives are already on record as respondent Nos.10 and 13. The deceased respondent Nos.5 and 6 are substituted by the respondent Nos.10 and 13 who we are informed have attained majority. We, accordingly, order deletion of the names of respondent Nos.5 and 6 from the array of parties. Necessary corrections be made in the cause title accordingly forthwith.

3. The appellants (the defendant Nos.1 and 2) took out chamber summons for the impleadment of the respondents to the chamber summons as party

defendants to the suit. The said chamber summons came to be rejected by the learned Chamber Judge by holding that since neither of the respondents is entitled to the estate of the deceased, the said respondents are neither necessary nor proper parties to the suit.

4. We find it too wide a statement of law that in an administration suit the party who is not entitled to the share in the estate of the deceased cannot be impleaded as party defendant in the suit. There may be circumstances in a case where though a person may not be entitled to the estate of the deceased yet his presence in the suit may enable the court in deciding the case finally and effectually.

5. In the administration suit, an enquiry has to be made to determine the estate of the deceased person. In a given situation though a person may not be entitled to any share in the estate of the deceased but his presence may be necessary to determine the estate of the deceased person. This would depend on the given fact situation.

6. In so far as the present case is concerned, we find that the first defendant has not filed the written statement so far. In a suit for administration of estate the defendants may claim relief as if they are the plaintiffs. In our view

in the facts and circumstances of the case the proper time for consideration of the application for the impleadment would be after the written statement is filed by the first defendant.

7. The matter requires reconsideration by the learned chamber Judge after the written statement is filed by the first defendant.

8. We, accordingly, set aside the order dated 15th March, 1996 and restore the chamber summons No.825 of 1995 for fresh consideration after the written statement is filed by the first defendant. The first defendant shall be at liberty to apply for necessary amendment in the chamber summons in the light of the death of the respondent Nos.5 and 6 (Sunil Kumar Sah and Smt.Kum Kum Sunil Sah).

No costs.

**(R.M.LODHA, J.)**

**(J.P. DEVADHAR, J.)**